



## **Federal Highway Administration**

### **23 CFR Part 192**

**[Docket No. FHWA-2020-0015]**

**RIN 2125-AF93**

### **Drug Offender's Driver's License Suspension**

**AGENCY:** Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** FHWA proposes to amend its regulations governing each State's certification of whether they choose to enact and enforce drug offender's driver's license requirements or choose to oppose enacting or enforcing the drug offender's driver's license requirement. The regulations apply to each State and specify the steps that States must take to avoid the withholding of Federal-aid highway funds for noncompliance with the certification requirements. Highway Safety is the top priority of both DOT and FHWA. The changes that FHWA has proposed to the regulations will not negatively impact safety, efforts to combat substance abuse, or the substantive protections provided by the State certification requirements. Rather, they simply update the regulations to align with the wording of relevant statutes, increase clarity, and reduce administrative burden on States. Reducing fatalities and serious injuries resulting from impairment will continue to be a top priority of the Department and FHWA.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366-9329.

All submissions should include the agency name and the docket number that appears in the heading of this document or the Regulatory Identification Number (RIN) for the rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah Pascual, Office of Safety, (HSA), (202) 366-0087, or via e-mail at [sarah.pascual@dot.gov](mailto:sarah.pascual@dot.gov), or Ms. Dawn Horan, Office of the Chief Counsel (HCC-30), (202) 366-9615, or via e-mail at [dawn.m.horan@dot.gov](mailto:dawn.m.horan@dot.gov). Office hours are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

## **SUPPLEMENTARY INFORMATION:**

### **Electronic Access and Filing**

This document and all comments received may be viewed online at <http://www.regulations.gov> using the docket number listed above. Electronic retrieval help and guidelines are available on the Website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's Website at: [www.FederalRegister.gov](http://www.FederalRegister.gov) and the Government Publishing Office's Website at: [www.GovInfo.gov](http://www.GovInfo.gov).

All comments received before the close of business on the comment closing date

indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period and after DOT has had the opportunity to review the comments submitted.

## **Background**

FHWA is required to withhold an amount equal to 8 percent of the amount of Federal-aid highway funds required to be apportioned to any State under 23 U.S.C. 104(b)(1) and (2), the National Highway Performance Program and the Surface Transportation Block Grant Program, respectively, on the first day of each fiscal year if the State fails to meet the requirements in 23 U.S.C. 159 associated with the revocation or suspension of driver's licenses of individuals convicted of drug offenses. The statute (23 U.S.C. 159) provides for two ways the States can satisfy this requirement: (1) the State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception, the revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted of any violation of the Controlled Substances Act<sup>1</sup> or any drug offense;<sup>2</sup> or (2) the State submits a written certification stating that the Governor is opposed to the enactment or enforcement of a law involving the revocation, suspension, issuance, or

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<sup>1</sup> The Controlled Substances Act, Public Law 91-513, tit. II, 84 Stat. 1242 (1970), as amended, is codified at 21 U.S.C. 801 *et seq.*

<sup>2</sup> A "drug offense" is defined as "any criminal offense which proscribes the possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act; or the operation of a motor vehicle under the influence of such a substance." 23 U.S.C. 159(c)(2).

reinstatement of driver's licenses to convicted drug offenders and submits written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law.

The regulations that implement this law first took effect in 1992. The current regulatory language references several administrative and fiscal provisions that were only applicable the first year the regulation was promulgated. This proposed rulemaking updates the administrative and fiscal language to what is currently required of the State. The current regulatory language also requires each State to annually certify their compliance with 23 U.S.C. 159, which has proved burdensome for the States. This proposed rulemaking eliminates the annual certification and only requires re-certification when there is a change to a State law affecting the State's method of compliance.

### **Legal Authority and Statement of the Issue**

FHWA is required to withhold an amount equal to 8 percent of the amount required to be apportioned to any State under 23 U.S.C. 104(b)(1) and (2) on the first day of each fiscal year if the State fails to meet the requirements in 23 U.S.C. 159 associated with the revocation or suspension of driver's licenses of individuals convicted of drug offenses. The regulations implementing this law in 23 CFR part 192 reference administrative and fiscal provisions that were only applicable the first year the regulation was promulgated and require annual certifications from States. FHWA proposes to revise its regulations governing the certification requirements in 23 CFR part 192 that implement the 23 U.S.C. 159 requirements to update the regulatory language and reduce burden on States.

### **Discussion of General Requirements and Limitations**

Consistent with 23 U.S.C. 159, FHWA is proposing to revise § 192.4 to update the amount of penalty withholding from 10 to 8 percent and update what apportioned funds the withholding applies to by changing sections 104(b)(1), 104(b)(3), and 104(b)(5)

to sections 104(b)(1) and (b)(2) of title 23 of the U.S.C. Proposed § 192.4 also allows for the Governor of the State or their designee to submit a written certification through its respective FHWA Division Administrator. This provision would result in reduced administrative burdens for Governors of the State, including time to obtain written signatures on certifications.

In proposed § 192.5, FHWA sets out new requirements when certifications compliant with 23 U.S.C. 159 are required. FHWA proposes to require all States to certify to the Secretary of Transportation, through their respective FHWA Division Administrator, by a date to be determined that it meets the requirements of 23 U.S.C. 159. This certification is needed to obtain a baseline from which compliance can be determined for all States. Information is requested from States regarding how much time is needed to provide a certification compliance with 23 U.S.C. 159. Because the timing of the effective date of this final rulemaking is unknown relative to existing annual certification requirements, FHWA will either provide a timeframe calculated from the publication date of the final rule in the Federal Register, or pick a date certain depending on the time of publication, but in either case, the deadline to certify would not be less than 120 days from the publication date of the final rule in the Federal Register. The FHWA is further proposing in § 192.5 to require a State to certify to the Secretary of Transportation, through its FHWA Division Administrator, that it meets the requirements of 23 U.S.C. 159 when there is a change to the State law, regulation, or binding policy relating to the suspension, revocation, issuance, or reinstatement of driver's licenses of drug offenders within 90 days of the effective date of a such a change affecting State compliance with 23 U.S.C. 159. FHWA believes that States do not often have changes in State laws, regulations, and binding policies affecting compliance with 23 U.S.C. 159, and that annual certification is redundant and unnecessary. FHWA expects that States will continue to monitor State laws, regulations, and policies relating to the suspension,

revocation, issuance, or reinstatement of driver's licenses of drug offenders and continue to notify their respective FHWA Division Administrator accordingly. FHWA also proposes to amend § 192.5 to update the wording of the certification to be consistent with allowing the Governor of the State or the Governor's designee to provide certification signatures. Lastly, FHWA also proposes to allow submission of electronic copies of signed certifications to the FHWA Division Administrator. These changes will reduce administrative burden by decreasing the number of submissions of original signed certifications.

FHWA is proposing in § 192.6 to clarify, in accordance with the statute, that funds withheld under § 192.4 from apportionment to any State will not be available for apportionment to the State and will lapse immediately.

FHWA proposes in § 192.7 to revise the procedures affecting States that are in noncompliance with 23 U.S.C. 159. FHWA proposes that States that fail to notify FHWA within 90 days of the effective date of a change to State law, regulation, or policy that affects State compliance with 23 U.S.C. 159, or are found to be in noncompliance based on the status of the State's certification, will be advised of the funds expected to be withheld under § 192.4 approximately 90 days before the beginning of the fiscal year for which the penalty withholding will be applied. The proposed revisions to § 192.7 also allow for a State to submit documentation demonstrating compliance. This provision gives a State an opportunity to rectify noncompliance prior to funds being withheld.

As stated, FHWA expects that States do not often change State laws, regulations, and binding policies affecting compliance with 23 U.S.C. 159, and would notify their respective FHWA Division Administrators in the event of such changes. Furthermore, the proposed regulation continues to allow FHWA to withhold Federal-aid funding, consistent with 23 U.S.C. 159, from a non-compliant State in the event the State either (1) does not notify FHWA in these circumstances or (2) does not provide certification in

compliance with 23 U.S.C. 159. Consequently, the proposed changes reduce neither safety nor the substantive protections provided by 23 U.S.C. 159.

Finally, FHWA proposes to make minor technical and conforming changes in part 192 to align the rule's language with the wording of relevant statutes and to promote overall clarity of the rule.

FHWA requests comments on the proposed rule. FHWA also requests comments and information regarding the assumptions used in, and other aspects of, the economic analysis of the proposed rule to inform the economic analysis at the final rule stage. FHWA presents the economic analysis in a supporting statement and a spreadsheet found in the rulemaking docket (FHWA-2020-0015) and summarizes the analysis under the "Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Rulemaking Policies and Procedures" heading of this preamble.

#### **Rulemaking Analyses and Notices**

#### **Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Rulemaking Policies and Procedures**

FHWA has determined that the proposed rule will not be a significant regulatory action within the meaning of Executive Order (E.O.) 12866 or DOT rulemaking policies and procedures.<sup>3</sup> This action complies with E.O. 12866 and 13563 to improve regulation. FHWA anticipates that the proposed rule would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The proposed rule also does not raise any novel legal or policy issues.

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<sup>3</sup> See DOT Order 2100.6A, "Rulemaking and Guidance Procedures" (June 7, 2021).

FHWA has determined that this action could generate cost savings, measured in 2020 dollars and discounted at 7 percent, expected to total \$181,812 over 10 years. The present value annualized total is \$25,886 per year.

The quantified cost savings resulting from this action are generated from reducing administrative burdens. The proposed rule will reduce the burden on States and FHWA by significantly reducing the number of compliance certifications required annually, without compromising the intent of the statute.

Currently, States must certify their compliance with 23 U.S.C. 159 annually. The proposed rule requires States only notify FHWA of a change in type of compliance, instead of recertifying compliance every year. Furthermore, the proposed rule will result in additional cost savings by allowing the State Governors to appoint a designee to certify compliance, instead of requiring the Governor's signature on the certification. This change will result in a lower-level of staff time needed to complete the certification. Under the proposed rule, the States must certify compliance in the first year after the rule takes effect. This will be an administrative cost to all 52 States.<sup>4</sup> However, this certification may be made using the new rule, allowing the Governor of the State to appoint a designee. Therefore, the costs to the States in the first year will still be lower under the proposed rule.

The proposed rule is not expected to affect the number of States in compliance with 23 U.S.C. 159. FHWA reports no States out of compliance in the last 3 years. Furthermore, in recent years, only one State has failed to certify, and this failure is not considered a typical occurrence. Based on this current trend, there is no expectation that any States will be out of compliance in the future due to the proposed rule or otherwise. Therefore, FHWA believes there will be no negative social consequences or disbenefits from the proposed rule.

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<sup>4</sup> 50 States as well as Washington, DC and Puerto Rico.

The proposed rule does not change the current requirement that State legislatures must pass a resolution in order to enact a change in type of compliance. Therefore, there will be no change in cost for the State legislature due to the proposed rule.

The method for estimating the cost savings from the proposed rule is as follows. The analysis uses a base year of 2020 and a 10-year analysis period. Estimated wage rates for FHWA employees at division offices, who currently process the State certifications, are based on 2020 General Schedule (GS) Locality Pay Tables.<sup>5</sup> Estimated wage rates for FHWA Headquarters staff, who compile and analyze the certifications nationwide, were obtained from the same source using the Washington, District of Columbia, locality table. Estimated wages for State government employees were obtained from the Bureau of Labor Statistics occupational employment statistics for State government employees. Lower wages were used in the proposed rule scenario, compared to the current regulation, in order to account for the ability of the Governor of the State to appoint a designee.<sup>6</sup> To account for the cost of employer provided benefits, all wage rates were multiplied by a factor of 1.61.<sup>7</sup> Wage rates were adjusted using this factor to generate a total cost of labor per hour, as seen in Table 1.

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<sup>5</sup> 2020 General Schedule (GS) Locality Pay Tables. An average GS-12, Step 1 wage was calculated using wages for all localities in which there is a FHWA Division Office: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2020/general-schedule/>.

<sup>6</sup> BLS May 2019 National Industry-Specific Occupational Employment and Wage Estimates NAICS 999200 - State Government, excluding schools and hospitals (OES Designation). The employees expected to work on the certification under the current regulation are Top Executives (11-1000). The employees expected to work on the certification under the proposed rule are Business Operations Specialists (13-1198): [https://www.bls.gov/oes/current/naics4\\_999200.htm](https://www.bls.gov/oes/current/naics4_999200.htm). Wage rates were adjusted to 2020 dollars using a 2.6% adjustment for inflation, which is the 2020 Federal cost of living adjustment: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/GS.pdf>.

<sup>7</sup> BLS Employer Costs for Employee Compensation, June 2020, Table 3 (page 5) State and Local Government, State and Local Government Workers: <https://www.bls.gov/news.release/eccec.t03.htm>. For this group, 62.2 percent of employee compensation is wages and the remainder is the cost of benefits, which suggests factoring wages by 1.61 (100%/62.2%) to estimate the total cost of compensation.

**Table 1: Hourly Wage Rates**

<b>Position</b>	<b>Base Wage per Hour</b>	<b>Total Wage per Hour</b>
FHWA Division Office Staff (GS-12)	\$38.09	\$61.33
FHWA Office of Safety Staff (GS-13)	\$49.19	\$79.20
FHWA Office of the Chief Counsel Staff (GS-14)	\$58.13	\$93.59
State Government Top Executives (11-1000)	\$45.85	\$75.74
State Government Business Operations Specialists (13-1198)	\$33.89	\$55.98

For State department of transportation administrative cost savings, under current regulation, all 50 States plus the District of Columbia and Puerto Rico must submit proof of compliance each year. Under the proposed rule, after the first year, only States which change compliance type must submit a certification. The estimated time burden on the States per certification is 5 hours in both the current and proposed rule scenarios. Given that FHWA historically receives 1-4 changes per year from States, going forward, the analysis assumed two compliance changes per year to be processed, after the first year of analysis. These changes were assumed to be medium to high level of administrative burden for processing by FHWA Division Office employees and Headquarters staff.

Under current regulation, the certification of compliance must be signed by the Governor of each State, while under the proposed rule, the Governor may appoint a designee. Based on current trends, FHWA assumes two States will make a change and submit for certification each year, under the proposed rule, with 5 hours of burden per State. Furthermore, the estimated wage rate was reduced to account for the appointment of a designee by the Governor under the proposed rule. Under the proposed rule, all 52 States will spend 5 hours certifying compliance in the first year, 2021, at a lower administrative cost due to the proposed rule, as seen in Table 2. For all years after the initial certification, rather than 52 States spending 5 hours per year submitting a certification with the Governor's signature, only 2 States will spend 5 hours per year submitting a certification with a designee's signature. This resulted in a yearly

undiscounted cost savings of \$19,132 for the States, beginning in 2022, as shown in Table 2.

**Table 2: Estimated Change in Administrative Burden on the States**

<b>Year</b>	<b>State Administrative Cost, Current</b>	<b>State Administrative Cost, Proposed Rule</b>	<b>Total Administrative Cost Savings</b>
2021	\$19,692	\$14,555	\$5,137
2022	\$19,692	\$560	\$19,132
2023	\$19,692	\$560	\$19,132
2024	\$19,692	\$560	\$19,132
2025	\$19,692	\$560	\$19,132
2026	\$19,692	\$560	\$19,132
2027	\$19,692	\$560	\$19,132
2028	\$19,692	\$560	\$19,132
2029	\$19,692	\$560	\$19,132
2030	\$19,692	\$560	\$19,132
<b>Total</b>	<b>\$196,918</b>	<b>\$19,594</b>	<b>\$177,325</b>

For FHWA administrative cost savings, under current regulation, FHWA receives 52 certifications annually which are processed by both the division offices and Headquarters. FHWA estimates that approximately 38 of these certifications are a low administrative burden (30 minute processing time at the district office), 12 are a moderate administrative burden (2.5 hour processing time at the district office), and 2 are high administrative burden (20 hour processing time at the district office). Calculations assume a GS-12 wage for FHWA Division Office employees. In addition, under the current regulation, each of the 52 certifications is processed for an additional 2 hours at Headquarters at the GS-13 and GS-14 levels.

Under the proposed rule, two certifications per year were assumed, at a moderate and high administrative burden, respectively. Wage rates were assumed to be the same across the current and proposed rule scenarios for FHWA. This resulted in a yearly undiscounted administrative cost savings of \$9,939 for FHWA, beginning in 2022, as shown in Table 3.

**Table 3: Estimated Change in Administrative Burden on FHWA**

<b>Year</b>	<b>FHWA Administrative Cost, Current</b>	<b>FHWA Administrative Cost, Proposed Rule</b>	<b>Total Administrative Cost Savings</b>
2021	\$12,168	\$12,168	\$0
2022	\$12,168	\$2,229	\$9,939
2023	\$12,168	\$2,229	\$9,939
2024	\$12,168	\$2,229	\$9,939
2025	\$12,168	\$2,229	\$9,939
2026	\$12,168	\$2,229	\$9,939
2027	\$12,168	\$2,229	\$9,939
2028	\$12,168	\$2,229	\$9,939
2029	\$12,168	\$2,229	\$9,939
2030	\$12,168	\$2,229	\$9,939
<b>Total</b>	<b>\$121,680</b>	<b>\$32,233</b>	<b>\$89,448</b>

Total cost savings were calculated by adding the State and FHWA administrative cost savings and discounting at 7 percent and 3 percent, as seen in Table 4. Overall, the total undiscounted administrative cost savings per year are \$5,137 in 2021 and \$29,071 after 2021. The total administrative cost savings over 10 years are \$181,812, discounted at 7 percent and \$224,741, discounted at 3 percent.

**Table 4: Estimated Administrative Cost Savings from the Proposed Rule**

<b>Year</b>	<b>Total Administrative Cost Savings</b>	<b>Total Administrative Cost Savings, Discounted at 7%</b>	<b>Total Administrative Cost Savings, Discounted at 3%</b>
2021	\$5,137	\$4,801	\$4,987
2022	\$29,071	\$25,391	\$27,402
2023	\$29,071	\$23,730	\$26,604
2024	\$29,071	\$22,178	\$25,829
2025	\$29,071	\$20,727	\$25,077
2026	\$29,071	\$19,371	\$24,346
2027	\$29,071	\$18,104	\$23,637
2028	\$29,071	\$16,919	\$22,949
2029	\$29,071	\$15,812	\$22,280
2030	\$29,071	\$14,778	\$21,631
<b>Total</b>	<b>\$266,772</b>	<b>\$181,812</b>	<b>\$224,741</b>

Overall, the proposed rule would result in a reduced administrative burden to both the States and FHWA and lead to cost savings of \$181,812 over 10 years, discounted at 7 percent. As noted above the rule is non-significant and is not expected to generate any

other costs or benefits aside from the administrative cost savings.

### **Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FHWA has evaluated the effects of this proposed rule on small entities, such as local governments and businesses, and anticipates that this action would not have a significant economic impact on a substantial number of small entities. The proposed rule affects State governments and State governments do not meet the definition of a small entity. Therefore, FHWA certifies that the action will not have a significant economic impact on a substantial number of small entities.

### **Unfunded Mandates Reform Act of 1995**

FHWA has determined that this proposed rule does not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, March 22, 1995, 109 Stat. 48). The actions in this proposed rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$155 million or more in any one year (when adjusted for inflation) for either State, local, and Tribal governments in the aggregate, or by the private sector. In addition, the definition of “Federal Mandate” in the Unfunded Mandates Reform Act excludes financial assistance of the type in which State, local, or Tribal governments have authority to adjust their participation in the program in accordance with changes made in the program by the Federal Government. The Federal-aid highway program permits this type of flexibility.

### **Executive Order 13132 (Federalism Assessment)**

FHWA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. FHWA has determined that this action would not have sufficient federalism implications to warrant the preparation of a federalism assessment. FHWA has also determined that this action would not preempt any State law or State

regulation or affect the States' ability to discharge traditional State governmental functions.

#### **Executive Order 12372 (Intergovernmental Review)**

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The OMB has renewed their approval for information collection entitled "Drug Offender's Driver's License Suspension Certification" (OMB Control No. 2125-0579).

#### **National Environmental Policy Act**

The Agency has analyzed this proposed rulemaking action pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded under 23 CFR 771.117(c)(20), which applies to the promulgation of regulations, and that no unusual circumstances are present under 23 CFR 771.117(b). Categorically excluded actions meet the criteria for categorical exclusions under the Council on Environmental Quality regulations and under 23 CFR 771.117(a) and normally do not require any further NEPA approvals by FHWA.

#### **Executive Order 13175 (Tribal Consultation)**

FHWA has analyzed this proposed rule under E.O. 13175 and believes that it will not have substantial direct effects on one or more Indian Tribes, does not impose substantial direct compliance costs on Indian Tribal governments, and does not preempt Tribal law. This proposed rule does not impose any direct compliance requirements on Indian Tribal governments nor does it have any economic or other impacts on the viability of Indian Tribes. Therefore, a Tribal summary impact statement is not required.

**Executive Order 13211 (Energy Effects)**

FHWA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. FHWA has determined that this action is not a significant energy action under the E.O. and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

**Executive Order 12898 (Environmental Justice)**

E.O. 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. FHWA has determined that this proposed rule does not raise any environmental justice issues.

**Regulation Identification Number**

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

**List of Subjects in 23 CFR Part 192**

Administrative practice and procedure, Drug abuse, Grant programs-transportation, Highway safety, Reporting and recordkeeping requirements.

Issued under authority delegated in 49 CFR 1.81 and 1.85.

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Stephanie Pollack,

In consideration of the foregoing, FHWA proposes to revise 23 CFR part 192 to read as follows:

**Authority:** 23 U.S.C. 159, 315.

**PART 192— DRUG OFFENDER’S DRIVER’S LICENSE SUSPENSION**

Sec.

192.1 Scope.

192.2 Purpose.

192.3 Definitions.

192.4 Adoption of drug offender’s driver’s license suspension.

192.5 Certification requirements.

192.6 Period of availability of withheld funds.

192.7 Procedures affecting States in noncompliance.

**Authority:** 23 U.S.C. 159, 315.

**§ 192.1 Scope.**

This part prescribes the requirements necessary to implement 23 U.S.C. 159, which encourages States to enact and enforce drug offender’s driver’s license suspensions.

**§ 192.2 Purpose.**

The purpose of this part is to specify the steps that States must take to avoid the withholding of Federal-aid highway funds for noncompliance with 23 U.S.C. 159.

**§ 192.3 Definitions.**

As used in this part:

(a) *Convicted* includes adjudicated under juvenile proceedings.

(b) *Driver’s license* means a license issued by a State to any individual that authorizes the individual to operate a motor vehicle on highways.

(c) *Drug offense* means:

(1) The possession, distribution, manufacture, cultivation, sale, transfer, or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or transfer any substance the possession of which is prohibited under the Controlled Substances Act, or

(2) The operation of a motor vehicle under the influence of such a substance.

(d) *Substance the possession of which is prohibited under the Controlled Substances Act or substance* means a controlled or counterfeit substance, as those terms are defined in subsections 102 (6) and (7) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802 (6) and (7) and listed in 21 CFR 1308.11 through 1308.15.

#### **§ 192.4 Adoption of drug offender's driver's license suspension.**

(a) The Secretary shall withhold 8 percent of the amount required to be apportioned to any State under each of sections 104(b)(1) and (b)(2) of title 23 of the U.S.C. on the first day of the next fiscal year if the State does not meet the requirements of this section.

(b) A State meets the requirements of this section if:

(1) The State has enacted and is enforcing a law that requires in all circumstances, or requires in the absence of compelling circumstances warranting an exception:

(i) The revocation, or suspension for at least 6 months, of the driver's license of any individual who is convicted, after the enactment of such law, of

(A) Any violation of the Controlled Substances Act, or

(B) Any drug offense, and

(ii) A delay in the issuance or reinstatement of a driver's license to such an individual for at least 6 months after the individual otherwise would have been eligible to have a driver's license issued or reinstated if the individual does not have a driver's license, or the driver's license of the individual is suspended, at the time the individual is so convicted, or

(2) The Governor of the State or their designee:

(i) Submits to the Secretary through its respective FHWA Division Administrator a written certification stating that the Governor is opposed to the enactment or enforcement in the State of a law described in paragraph (b)(1) of this section relating to the revocation, suspension, issuance, or reinstatement of driver's licenses to convicted drug offenders; and

(ii) Submits to the Secretary a written certification that the legislature (including both Houses where applicable) has adopted a resolution expressing its opposition to a law described in paragraph (b)(1) of this section.

(c) A State that makes exceptions for compelling circumstances must do so in accordance with a State law, regulation, binding policy directive or statewide published guidelines establishing the conditions for making such exceptions and in exceptional circumstances specific to the offender.

#### **§ 192.5 Certification requirements.**

(a) Each State shall certify to the Secretary by [DATE TO BE DETERMINED during development of FINAL RULE] that it meets the requirements of 23 U.S.C. 159 and this regulation. Subsequently, each State shall certify to the Secretary through its respective FHWA Division Administrator that it meets the requirements of 23 U.S.C. 159 and this regulation when there is a change to the State law, regulation, or binding policy relating to the suspension, revocation, issuance, or reinstatement of driver's licenses of drug offenders within 90 days of the effective date of a State legislative change that affects State compliance with this section.

(b) If the State believes it meets the requirements of 23 U.S.C. 159 and this regulation on the basis that it has enacted and is enforcing a law that suspends or revokes the driver's licenses of drug offenders, the certification shall contain a statement by the Governor of the State, or their designee, that the State has enacted and is enforcing a Drug Offender's Driver's License Suspension law that conforms to 23 U.S.C.

159(a)(3)(A). The certifying statement may be worded as follows: I, (Name of Governor or designee), (ADD TITLE on behalf of the) Governor of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_, has enacted and is enforcing a Drug Offender's Driver's License Suspension law that conforms to section 23 U.S.C. 159(a)(3)(A).

(c) If the State believes it meets the requirements of 23 U.S.C. 159(a)(3)(B) on the basis that it opposes a law that requires the suspension, revocation, or delay in issuance or reinstatement of the driver's licenses of drug offenders that conforms to 23 U.S.C.

159(a)(3)(A), the certification shall contain:

(1) A statement by the Governor of the State or their designee that the Governor is opposed to the enactment or enforcement of a law that conforms to 23 U.S.C.

159(a)(3)(A) and that the State legislature has adopted a resolution expressing its opposition to such a law. The certifying statement may be worded as follows: I, (Name of Governor or designee), (ADD TITLE on behalf of the) Governor of the (State or Commonwealth of \_\_\_\_\_, do hereby certify that I am opposed to the enactment or enforcement of a law that conforms to 23 U.S.C. 159(a)(3)(A) and that the legislature of the (State or Commonwealth) of \_\_\_\_\_, has adopted a resolution expressing its opposition to such a law.

(2) Until a State has been determined to be in compliance with the requirements of 23 U.S.C. 159(a)(3)(B) and this regulation, the certification shall include a copy of the resolution.

(d) The Governor or their designee shall submit an electric copy of the certification to its respective FHWA Division Administrator. The FHWA Division Administrator shall retain an electronic copy and forward an electronic copy to both the FHWA Office of Safety and the FHWA Office of the Chief Counsel.

(e) Any changes to the certification or supplemental information necessitated by the review of the certifications as they are forwarded, State legislative changes that affects State compliance of this section, or changes in State enforcement activity shall be submitted within 90 days of the change being effective.

**§ 192.6 Period of availability of withheld funds.**

Funds withheld under §192.4 from apportionment to any State will not be available for apportionment to the State and shall lapse immediately.

**§ 192.7 Procedures affecting States in noncompliance.**

(a) If FHWA determines that the State is not in compliance with 23 U.S.C. 159(a)(3), the State will be advised of the funds expected to be withheld under §192.4 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e). This notification will normally occur not later than 90 days before the beginning of the fiscal year for which the sums to be apportioned are authorized. The State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation demonstrating its compliance. Documentation shall be submitted electronically to the FHWA Division Administrator for that State. The FHWA Division Administrator shall retain an electronic copy and forward an electronic copy to both the FHWA Office of Safety and the FHWA Office of the Chief Counsel.

(b) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 159(a)(3), based on FHWA's final determination, will receive notice of the funds being withheld under §192.4 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.